IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

W.P.No.3595 of 1995

Between :

P.Janardhan Reddy .. Petitioner

And

The State of Andhra Pradesh
Rep. by its Chief Secretary,
Secretariat, Saifabad, Hyderabad
and two others .. Respondents

ORAL ORDER :

The petitioner is a Member of Legislative Assembly and he was also a Member of Legislative Assembly at the time when the writ petition was filed representing Khairatabad Constituency. It appears there is a colony called Gyani Zail Singh Nagar Colony in the said constituency. In the said area, an extent of about 3 hectares of Government land in Sy.No. 403, of Shaikpet village i.e., Town Survey No.1, Ward No.9, Block F, was under the occupation of some of the landless persons. It appears that the said persons sought regularization of their occupation of the land and as on today we are informed that their occupations were regularized and

pattas in respect of the lands were granted in favour of the occupants.

However, it appears that the 2nd respondent received some complaints regarding the encroachments and on receipt of such complaint, the 3rd respondent caused an enquiry through the Mandal Revenue Officer, Golkonda. The Mandal Revenue Officer in turn submitted a report on 25.1.1995 informing that there are organized encroachments with the support of unsocial elements. Pursuant to the report, the 2nd respondent authorized Revenue Divisional Officer, Hyderabad to get the encroachments removed under the Andhra Pradesh Land Encroachment Act, 1905 by his decision dated 28.1.1995. Pursuant to the orders of the 2nd respondent, the Revenue Divisional Officer, Hyderabad, Mandal Revenue Officer, Golkonda, assisted by the police and the municipal authorities, went to the spot to remove the encroachments. At that point of time, the petitioner along with another, then Member of the Legislative Assembly and others is alleged to have resisted the removal.

The case of the petitioner is that as a Member of Legislative Assembly he was aware of the fact that by then proceedings were pending before the government at various levels for granting the pattas in favour of the encroachers and therefore the petitioner believed the removal of the encroachers would be unjust and would cause undue hardship to the occupants of

those small hutments which were sought to be removed. Therefore, he went and tried to stop the eviction proceedings

Thereafter, the 2nd respondent issued Warrants of Arrest under Section 6(2) of the Land Encroachment Act authorizing the arrest and detention of the petitioner and various other persons.

As a matter of fact, the petitioner was arrested and committed to Musheerabad Jail on the same day i.e., 28.1.1995. Subsequently, by the proceedings dated 29.1.1995 of the 2nd respondent, it was ordered that the petitioner and others who were detained on the bassis of the warrants issued earlier be released from the Musheerabad jail.

The present petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction declaring the action of the 2nd respondent in issuing the arrest warrant and effecting the petitioner's arrest as arbitrary, void and violative of the fundamental rights guaranteed to us under Articles 14 and 21 of the Constitution of India and issue the consequential direction to the first respondent to compensate the petitioner

herein by paying a sum of Rs.2,00,000/- as compensation for the illegal arrest of the petitioner and detention by the 2nd respondent and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

The petitioner complains the issuance of the warrants was not in accordance with the procedure contemplated under Section 6 of the Land Encroachment Act and the consequential detention of the petitioner is illegal and therefore prays that compensation be awarded to him for such illegal detention.

The learned counsel for the petitioner Sri Ravinder Rao argued that having regard to the language and scheme of Section 6(2) of the Land Encroachment Act, the Collector though authorized to issue arrest warrant against the persons who are obstructing the removal of encroachments, is required to be satisfied that such detention is necessary in order to carry out the decision to remove the encroachment and further such a decision cannot be implemented without arrest and detaining the persons who are resisting the removal of encroachments. Learned Counsel further submitted that the language of Section 6(2) is categoric and mandates a summary enquiry before such a decision to issue the arrest warrant taken by the Collector and no such enquiry was conducted in the case on hand.

Both the 1st and the 2nd respondents filed counters. The 2nd respondent in his counter elaborated the basis on which a decision was taken to evict the encroachers, the details of which may not be necessary for the issue on hand. Insofar as the decision of the 2nd respondent to detain the petitioner and others are concerned, the 2nd respondent stated as follows :

> "… In the meanwhile the Mandal Revenue Officer, Golconda submitted a report to the Collector, informing about the happenings at the site i.e., insistence of the MLAs for stopping of removal of encroachments and withdrawal of staff from the site and hesitancy of the police to remove the MLAs and others who are obstructing the work from the site so as to enable the staff to continue their work. The Collector spoke to the Commissioner of Police at 2.00 PM on the same day apprising him of the facts that work was stopped and police are not able to remove the people obstructing Government servants from the spot. The Commissioner of Police had informed that the Mandal Revenue Officer/Revenue Divisional Officer had not filed complaint to that effect and wanted for written orders for their arrest.

9. At that stage, after

convincing myself of the fact that no work can go on without removing the MLAs and their henchmen from the site, warrants u/s. 6 of A.P.L.E.Act were issued for removal of the obstructers from the site and giving them under the charge of Superintendent, Central Prison Musheerabad for safe custody. Accordingly, the police removed two MLAs and five others including three persons who are at the forefront of the activity of the illegal encroachments and given them in the charge of Superintendent, Central Prison, Musheerabad for safe custody. At last, at about 4.00 PM the work of removal of encroachments was re-started and about (45) huts out of (517) erected on the land were removed. The remaining huts could not be removed due to lack of time on that day."

Section 6(2) reads as follows :

6. Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops, etc. :- (1) xxxxx

(2) Mode of eviction :- An eviction under this section shall be made in the following manner, namely : By serving a notice in the manner provided in Section 7 on the person

reputed to be in occupation or his agent requiring him within such time as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstruction by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction shall continue, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period :

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Section 183, 186 or 188 of the Indian Penal Code in respect

of the same facts."

Section 6(2), no doubt, authorizes the Collector to arrest and detain the persons who are obstructing the removal of encroachments, but such a decision to arrest and detain a person is required to be preceded by a satisfaction of the Collector who is authorized to issue the warrant of arrest. It goes without saying that a satisfaction contemplated under Section 6(2) of the Act must be satisfaction of a reasonable person based on rational considerations. Whether such rational consideration went into the decision making process of the 2nd respondent in issuing the warrant of arrest is a matter to be assessed by this Court on the basis of the record. No contemporaneous record which formed the basis for the decision of the Collector is placed before the Court except an affidavit of the 2nd respondent-Collector that was sworn to almost after a lapse of seven years. Inspite of an earlier direction by this Court to produce the relevant record, the State expressed its inability to produce the same. In the circumstances, this Court can only draw an adverse inference that there was no material before the Collector to come to such a decision. Even according to the affidavit filed by the Collector, the Mandal Revenue Officer, who was incharge of the removal of the encroachment operation did not even file a complaint with the police regarding the obstruction caused either by

the petitioner or any other person. From the affidavit of the 2nd respondent, it appears that it is only a report (which is not placed before the Court) of the Mandal Revenue Officer, Golconda regarding the alleged obstruction by the petitioner and others which formed the basis of the decision by the 2nd respondent.

In the circumstances, I am of the opinion that the decision of the Collector to issue arrest warrants under Section 6(2) of the Land Encroachment Act cannot be sustained and the consequential detention of the petitioner must be held to be unwarranted. I am of the opinion that in any situation like this before the Collector decides to exercise the power under Section 6(2) of the Land Encroachment Act, necessarily he must place on record any report received by him regarding the nature of the obstruction and also his own assessment of the gravity of the obstruction to justify the decision to issue the warrants of arrest. It is also necessary that before any such decision by the Collector is taken, there must have been registered a complaint under Section 186 IPC or any other appropriate provision of law regarding obstruction.

The other submission made by the learned counsel for the petitioner is that as Section 6(2) contemplates a summary enquiry, the Collector cannot merely act on the complaint received by him regarding the obstruction, but must make a summary enquiry into

the complaint.

Section 6(2) of the Act clearly indicates that the Collector must be satisfied that there is resistance or obstruction without any just cause and that such resistance or obstruction shall continue, unless prevented, indicate in my opinion, the scope of the summary enquiry contemplated in the Section. When proceedings under the Land Encroachment Act are taken against any person, the person so sought to be evicted or any other person assisting the alleged encroacher may have a material to establish that in law that they are entitled to continue in possession of the property, from which they are sought to be evicted on any one of the grounds known to law. An authority which is seeking to evict such person or the Collector who issues the warrant of arrest against the persons who are allegedly resisting the eviction is obliged to examine at least cursorily the tenability of the claim raised by the obstructor. The conclusion reached by either the Collector or his subordinates who are evicting the alleged encroachment may not be conclusive, but the obligation to examine the claims is implied in the language of Section 6(2), more particularly, clause `obstruction was without any just cause'. Further even if the Collector comes to the conclusion that the obstruction was not justified or without a just cause, he must further be satisfied that the encroachment cannot be removed except by arresting and detaining the obstructor. The satisfaction must

necessarily be a rational satisfaction based on facts and circumstances of each case to ensure a rational exercise of such a power. The minimum that is required is that the Collector before exercising the power must record the reasons which prompt him to exercise the power to detain a person.

The next question that is required to be examined in this case is that in view of the conclusion reached that the decision of the 2nd respondent to detain the petitioner cannot be sustained, whether the petitioner is entitled for any compensation from the State and if he is entitled, what is the amount of compensation.

Coming to the question of compensation, the learned counsel for the petitioner Sri Ravinder Rao argued that the petitioner being the Member of Legislative Assembly for a long time, is not really interested in the monetary compensation, but is only fighting to vindicate the cause that a citizen cannot be deprived of his personal liberty save by the procedure established by law.

Heard the learned Government Pleader.

In the circumstances, I am of the opinion that a token compensation by way of damages in public law of Rs.1,000/- (Rupees One Thousand only) be awarded to the petitioner and paid by the State.

The writ petition is allowed as indicated above.

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14.06.2006